IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2552 of 2004
with
Civil Application No.8486 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA
and
HON'BLE MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION
Versus
KAUSALYABEN AJANTABHAI VASAVA

Appearance:
1. First Appeal No. 2552 of 2004
MR HARDIK C RAWAL for Appellant
MR BG JANI for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 19/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. The appeal is admitted and notice thereof is waived by the learned advocate Mr. B.G. Jani for the respondents. This appeal was taken up for final disposal at the request of the learned counsel.

2. The appellant has called into question the judgment and order of the Ex-Officio Commissioner for Workmen's Compensation (Labour Court) at Surat, whereby the respondents are awarded compensation alongwith interest and penalty.

3. Pursuant to death of late Ajantabhai Vasava, during the course of employment, the appellant appears to have deposited a sum of Rs.1,03,990/- and being dissatisfied by the same, one of the respondents appears to have made an application for further deposit under Section 22A of the Workmen's Compensation Act, 1923 ('the Act' for short). The appellant appears to have filed Vakaltnama of its advocate pursuant to the notice issued by the Commissioner but does not seem to have led any evidence and, therefore, relying upon the particulars submitted in Form A, the Commissioner found that the monthly wages of the deceased was Rs.2,000/- and considering the age of 30 years, a total sum of Rs.2,07,980/- was required to be deposited by way of compensation. In absence of any plea to the contrary, the amount of compensation calculated at Rs.2,07,980/= was determined to be due and the amount having fallen short by almost 50% and on account of late payment of the same, interest and penalty are also awarded by the impugned judgment. The Commissioner, however, restricted the amount of penalty to the extent of 10% in view of the provisions to the effect that the amount of penalty were required to be paid to the Government.

4. The learned counsel for the appellant challenged only the part of the order by which penalty was imposed upon the appellant and submitted that since the appellant was in poor financial condition and since the amount due, according to it, were immediately deposited and since the amount of penalty were to be credited to the State Government, the imposition of penalty may be set aside.

5. The learned counsel Mr. BG Jani, appearing for the respondents, pointed out that the provisions of sub-section 3 (a) of section 4A of the Act have been amended by the Workmen's Compensation (Amendment) Act, 2000, according to which, the interest and penalty

payable under sub-section (3) of Section 4A have to be paid to the workman or his dependents, as the case may be. He, therefore, submitted that the amount of penalty cannot be reduced only on the ground that the amount of penalty was, in any case, to be credited to the State Government. He, however, fairly conceded that in view of the fact that a part of the amount was deposited voluntarily by the appellant and the remaining amount with interest also was deposited, the percentage of penalty may be reduced to half.

6. No other ground of challenge was pressed and, therefore, the impugned judgment and order is required to be modified to the aforesaid extent by consent.

7. Accordingly, the appeal is partly allowed and the impugned judgment and order is modified to the extent that the respondents shall be entitled to disbursement, subject to the orders of the Commissioner for Workmen's Compensation, Surat with penalty at the rate of 5% and the remaining half of the amount of penalty shall be refunded to the appellant. The rest of the judgment and order remains intact. In view of the facts and circumstances of the case, there shall be no order as to costs. Civil Application for stay does not survive in view of this order in appeal.

8. It is needless to clarify that the Commissioner for Workmen's Compensation shall pass necessary orders for disbursement in accordance with law having regard to the status, age and requirements of the respondents.

(A.M. Kapadia, J.)

(D.H. Waghela, J.)

(karan)